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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/697,850  
Filing Date: October 30, 2003  
Appellant(s): BAKER ET AL.

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Robert Racunas  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 06 October 2008 appealing from the Office action mailed 19 March 2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

Indications of claim rejections as set forth by Appellant are correct.

This Examiner's Answer contains a new ground of rejection, namely a 101 rejection of claims 13-35 as follows:

Claims 13-35 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) it is tied to a particular machine or apparatus, or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC

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(2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 13-35 are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 U.S.C. 101. Note the Board of Patent Appeals Informative Opinion Ex parte

Langemyer

al

[http://iplaw.bna.com/iplw/5000/split\\_display.adp?fedfid=10988734&vname=ippqc ases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0](http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqc ases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0) .

## **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

U.S. Patent 6,920,429 to Barni et al.

U.S. Publication No. 2002/0133445 to Lessin

U.S. Patent 5,987,429 to Maritzen et al.

U.S. Publication No. 2002/0152130 to Salls

U.S. Patent 6,496,809 to Nakfoor

U.S. Publication No. 2001/0047290 to Petras et al.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 13-35 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) it is tied to a particular machine or apparatus, or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is

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being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 13-35 are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 U.S.C. 101. Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al –

[http://iplaw.bna.com/iplw/5000/split\\_display.adp?fedfid=10988734&vname=ippqc ases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0](http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqc ases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0) .

Claims 1-4, 6-7, 9-10, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barni, et al. [U.S. Pat. No. 6,920, 429] and further in view of Lessin [U.S. Pat. Pub. 2002/0133445].

Regarding Claim 1, Barni, et al. discloses, A system for providing logistics for a sale of one or more goods, the system being adapted to receive information from at least one remote seller and at least one remote buyer, to present a seller interface for receiving- information from the seller comprising a seller identity and a description of the one or more goods, to present the buyer with the description of the one or more

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goods while maintaining- the seller identity confidential from the buyer, and to provide financial logistics and shipping logistics for completing the sale of goods, wherein:

the financial logistics include collecting funds from a financial service provider designated by the buyer, deducting a fee for use of the system from the funds, **(Fig. 6, C4 L4-L8, C5 L30-L35, C8 L1-L3)**

Barni, et al. does not explicitly disclose, the seller interface includes one or more options to donate at least a portion of funds received in exchange for the one or more goods; transferring the portion of the funds for donation according- to an option selection of the seller to a third party designated by the seller, without requiring interaction between the buyer and seller.

Lessin discloses, the seller interface includes one or more options to donate at least a portion of funds received in exchange for the one or more goods; transferring the portion of the funds for donation according- to an option selection of the seller to a third party designated by the seller, without requiring interaction between the buyer and seller.

**(¶19)**

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Lessin in the device of Barni, et al., in order to donate profits to charity (**¶19 from Lessin**).

Regarding Claims 2-4, Barni, et al. fails to explicitly disclose third party comprising a charitable or nonprofit entity, political action committee, fundraising entity.

However, the difference between a third party as disclosed by Barni, et al. and the named entities is only found in the non-functional descriptive material and is not functionally involved in the steps recited. Defining the third party would be performed the same regardless of whether the entity was charitable, political action committee or fundraising entity. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to have different entities such as named above because the third party name does not functionally relate to the steps in the method claimed and because the subjective interpretation of the order does not patentably distinguish the claimed invention.



Regarding Claim 6, Barni, et al. further discloses, wherein the system is adapted to receive the information over a computer network. (Fig. 6, C4 L4-L8, C5 L30-L35, C8 L1-L3)

Regarding Claim 7, Barni, et al. further discloses, wherein the financial logistics comprises conducting an auction over the computer network. (Fig. 6, C4 L4-L8, C5 L30-L35, C8 L1-L3)

Regarding Claim 9, Barni, et al. further discloses, wherein the system is adapted to provide the shipping logistics by use of at least one geography-based and time-based strategy. (Fig. 6, C4 L4-L8, C5 L30-L35, C8 L1-L3)

Regarding Claim 10, Barni, et al. further discloses, wherein the goods are time-sensitive. (Fig. 6, C4 L4-L8, C5 L30-L35, C8 L1-L3)

Regarding Claim 12, Barni, et al. further discloses, wherein the financial logistics include authorizing an amount of sale on a credit card of the buyer, charging the credit card for the amount of sale, receiving the amount of sale, and transferring at least a portion of the amount of sale to the third party. (Fig. 6, C4 L4-L8, C5 L30-L35, C8 L1-L3)

Regarding Claim 13, Barni, et al. discloses,

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A method for providing logistics for a sale of one or more goods comprising the steps of:

receiving information from a the seller, including a description of certain goods, a method of sale for the certain goods,

presenting the description of the certain goods to a prospective buyer according to the method of sale;

conducting the sale over a computer network;

providing financial logistics, including collecting proceeds from a financial service provider designated by the buyer, deducting a fee for use of the system from the proceeds,

providing shipping logistics, including arranging for transfer of the one or more goods to the buyer.

**(Fig. 6, C4 L4-L8, C5 L30-L35, C8 L1-L3)**

Barni, et al. does not explicitly disclose,

an option selection including at least a portion of proceeds for donation and an identity of a third party that will receive proceeds from the sale;

transferring the portion of the proceeds for donation according- to the option selection of the seller to the third party;

Lessin discloses,

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an option selection including at least a portion of proceeds for donation and an identity of a third party that will receive proceeds from the sale;  
transferring the portion of the proceeds for donation according- to  
the option selection of the seller to the third party;

**(¶19)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Lessin in the device of Barni, et al., in order to donate profits to charity **(¶19 from Lessin)**.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barni, et al. [U.S. Pat. No. 6,920, 429] and Lessin [U.S. Pat. Pub. 2002/0133445] as applied to claim 2 above, and further in view of Maritzen, et al. [U.S. Pat. No. 5,987, 429].

Regarding Claim 5, Maritzen et al. discloses,

wherein said financial logistics comprises providing said entity with information regarding the seller sufficient to allow the entity to generate an acknowledgement for tax reporting purposes. **(Fig. 2B, 6)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Maritzen et al. in the device of Barni, et al., in

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order to calculate the appropriate fee since specific information about the transaction may change the fee. **(Abstract from Maritzen et al.)**

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barni, et al. [U.S. Pat. No. 6,920, 429] and Lessin [U.S. Pat. Pub. 2002/0133445] as applied to claim 6 above, and further in view of Salls [U.S. Pat. Pub. 2002/0152130].

Regarding Claim 8, Salls discloses,

wherein the financial logistics comprises conducting a raffle over the computer network. **(Abstract)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Salls in the device of Barni, et al., in order to allow remote individuals to participate and allow the seller to obtain a predetermined amount based on the number of tickets sold. **(¶ 10-12 from Salls)**

Claims 11, 14-17, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barni, et al. [U.S. Pat. No. 6,920, 429] and Lessin [U.S. Pat. Pub. 2002/0133445] as applied to claims 10, 13 above, and further in view of Nakfoor [U.S. Pat. No. 6,496,809].

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Regarding Claim 11, Nakfoor further discloses, The system of claim 10 wherein the goods are event tickets. **(Fig. 4)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Nakfoor in the device of Barni, et al., in order to transfer the tickets and money in a timely manner since the worth of the tickets expire due to the event ending. **(Abstract from Nakfoor)**

Regarding Claim 14, Nakfoor discloses, wherein the goods comprise event tickets. **(Fig. 4)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Nakfoor in the device of Barni, et al., in order to transfer the tickets and money in a timely manner since the worth of the tickets expire due to the event ending. **(Abstract from Nakfoor)**

Regarding Claims 15, 16, 17, Nakfoor et al. fails to explicitly disclose third party comprising a charitable or nonprofit entity, political action committee, fundraising entity.

However, the difference between a third party as disclosed by Barni, et al. and the named entities is only found in the non-functional descriptive material and is not

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functionally involved in the steps recited. Defining the third party would be performed the same regardless of whether the entity was charitable, political action committee or fundraising entity. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to have different entities such as named above because the third party name does not functionally relate to the steps in the method claimed and because the subjective interpretation of the order does not patentably distinguish the claimed invention.

Regarding Claim 20, Barni, et al. further discloses,

wherein said system is adapted to provide said shipping logistics by use of at least one geography-based and time-based strategy. **(Fig. 6)**

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Claims 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakfoor [U.S. Pat. No. 6,496,809] as applied to claim 15 above, and further in view of Maritzen, et al. [U.S. Pat. No. 5,987, 429].

Regarding Claim 18, Maritzen et al. discloses,

providing the charitable or nonprofit entity with information regarding the seller sufficient to allow the entity to generate an acknowledgement for tax reporting purposes. **(Fig. 2B, 6)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Maritzen et al. in the device of Nakfoor, in order to calculate the appropriate fee since specific information about the transaction may change the fee. **(Abstract from Maritzen et al.)**

Regarding Claim 19, Maritzen et al. discloses,

causing an acknowledgement for tax reporting purposes to be provided to the seller. **(Fig. 2B, 6)**

Claims 21-22, 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salls [U.S. Pat. Pub. 2002/0152130] and further in view of Lessin [U.S. Pat. Pub. 2002/0133445].

Regarding Claim 21, Salls discloses,

A computerized method for conducting a raffle,

comprising the steps of:

receiving requests to purchase raffle tickets from a plurality of buyers over a computer network;

receiving identification information from the plurality of buyers;

creating a record of the plurality of buyers weighted according to the number of tickets purchased by each buyer;

selecting a winner at random from the record;

notifying the winner

**(Abstract, Fig. 8, 13)**

Salls does not explicitly disclose,

Receiving information from a first party comprising- a description of one or more goods

providing the first party with one or more options for donating- proceeds

receiving an option selection from the first party;

donating the proceeds to a third party in accordance with

the option selection of the first party.

Lessin discloses,



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Receiving information from a first party comprising- a description of one or more goods

providing the first party with one or more options for donating- proceeds

receiving an option selection from the first party;

donating the proceeds to a third party in accordance with

the option selection of the first party.

(¶19)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Lessin in the device of Salls, in order to donate profits to charity (**¶19 from Lessin**).

Regarding Claim 22, Salls further discloses, wherein the winner wins goods provided by a first party. (**Fig. 14**)

Regarding Claim 29, Salls fails to explicitly disclose a spreadsheet.

However, the difference between database as disclosed by Salls and the spreadsheet is only found in the non-functional descriptive material and is not functionally involved in the steps recited. Defining the database would be performed the same regardless of whether the spreadsheet existed. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not

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distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to create a spreadsheet from the database table or view the table because the database tables do not functionally relate to the steps in the method claimed and because the subjective interpretation of the order does not patentably distinguish the claimed invention.

Regarding Claim 30, Salls fails to explicitly disclose the method of determining the primary key.

However, the difference between primary key as disclosed by Salls and the row number in the spreadsheet is only found in the non-functional descriptive material and is not functionally involved in the steps recited. Defining the primary key would be performed the same regardless of whether the row number in the spreadsheet was generated by a formula. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862

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(CAFC 2004); In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to use a row number generated by a formula in a spreadsheet because the primary key does not functionally relate to the steps in the method claimed and because the subjective interpretation of the order does not patentably distinguish the claimed invention.

Regarding Claims 31, Salls fails to explicitly disclose random number as the row number in a spreadsheet.

However, the difference between random number as disclosed by Salls and the random number as a row number is only found in the non-functional descriptive material and is not functionally involved in the steps recited. Defining the random number would be performed the same regardless of whether the random number as a row number was used. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Ngai, 70 USPQ2d 1862 (CAFC 2004); In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to random number as a row number because the random number does not functionally relate to the steps in the method claimed and because the subjective interpretation of the order does not patentably distinguish the claimed invention.

Regarding Claim 32, The method of claim 21 wherein the record is created by sequentially assigning numbers to the plurality of buyers based on the number of tickets purchased by each buyer, wherein a winner is selected by generating a random number between one and the total number of tickets sold, and wherein the winner is the buyer corresponding to the random number.

Regarding Claim 32, Salls fails to explicitly disclose the random number being less than the number of tickets sold.

However, the difference between random number as disclosed by Salls and the random number equal to or less than the number of tickets sold is only found in the non-functional descriptive material and is not functionally involved in the steps recited. Defining the random number would be performed the same regardless of whether the random number equal to or less than the number of tickets sold. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this

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descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to generate the random number equal to or less than the number of tickets sold because the random number does not functionally relate to the steps in the method claimed and because the subjective interpretation of the order does not patentably distinguish the claimed invention.

Claims 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salls [U.S. Pat. Pub. 2002/0152130] and Lessin [U.S. Pat. Pub. 2002/0133445] as applied to claim 22 above, and further in view of Nakfoor [U.S. Pat. No. 6,496,809].

Regarding Claim 23, Nakfoor discloses,

wherein the goods comprise event tickets. (Abstract)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Nakfoor in the device of Salls, in order to transfer the tickets and money in a timely manner since the worth of the tickets expire due to the event ending. **(Abstract from Nakfoor)**

Regarding Claim 24,

receiving information from the first party, including the identity of a the third party that will receive the proceeds of the raffle; and  
presenting information to the plurality of buyers that transferring proceeds from raffle tickets purchased will be donated to the third party.

Examiner notes that this is well known in the art at the time of the invention. For example, Churches routinely offer raffles to raise money for charities.

Regarding Claims 25-27, Barni, et al. fails to explicitly disclose third party comprising a charitable or nonprofit entity, political action committee, fundraising entity.

However, the difference between a third party as disclosed by Salls and the named entities is only found in the non-functional descriptive material and is not functionally involved in the steps recited. Defining the third party would be performed the same regardless of whether the entity was charitable, political action committee or fundraising entity. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004);

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In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to have different entities such as named above because the third party name does not functionally relate to the steps in the method claimed and because the subjective interpretation of the order does not patentably distinguish the claimed invention.

Regarding Claim 28, Salls further discloses, The method of claim 25, further comprising the step of:

causing an acknowledgement for tax reporting purposes to be provided to the first party. (**¶ 6-8**)

Claims 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salls [U.S. Pat. Pub. 2002/0152130] and Lessin [U.S. Pat. Pub. 2002/0133445] as applied to claim 21 above, and further in view of Petras, et al. [U.S. Pat. Pub. 2001/0047290].

Regarding Claim 33, Petras et al. discloses,

wherein the winner is notified over the computer network. (**¶ 220**)

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Petras et al. in the device of Salls, in order to provide automatic notification since this be one of the effective methods in contacting the parties involved (**¶ 220 from Petras et al.**).

Regarding Claim 34, Petras et al. further discloses, The method of claim 33 wherein the winner is notified by automatically generating an email to the winner. (**¶ 220**)

Regarding Claim 35, The method of claim 33 wherein the winner is notified by automatically generating an instant message to the winner.

Regarding Claim 35, Petras et al. fails to explicitly disclose an instant message being sent.

However, the difference between an email being sent as disclosed by Petras et al. and the instant message is only found in the non-functional descriptive material and is not functionally involved in the steps recited. Defining the electronic message sent would be performed the same regardless of whether the instant message was used. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*,



703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to send an instant message because the generating of an electronic message such as an email does not functionally relate to the steps in the method claimed and because the subjective interpretation of the order does not patentably distinguish the claimed invention.

#### **(10) Response to Argument**

The Appellant's arguments have been considered but are not persuasive.

With regard to the limitations of claims 1, 13, and 21, Appellant argues that, "Lessin fails to disclose the seller interface includes one or more options to donate at least a portion of funds received in exchange for the one or more goods; and ... transferring the portion of the funds for donation according to an option selection of the seller to a third party designated by the seller ...." The rejection pointed to paragraph 0019 in Lessin. Appellant further argues that Lessin discloses donating funds from future transactions, while the instant invention is directed to donating funds from goods that have already been sold. The examiner would like to point out that paragraph 0019 discloses an option for a business to donate a portion of its profits go towards a specific item (i.e. a percentage goes to a particular charity). The examiner would also like to point

out that when a business is pledging to make a donation from goods that are going to be sold, that the business must actually sell the goods before the donation can be made, and thus the goods would have already been sold at the point the donation is made. With regard to the transferring the portion of funds for donation, it would have been obvious to one skilled in the art at the time of the invention that when a business pledges and collects the funds to make a donation, that the next logical step would be to actually transfer the funds to complete the donation process. Applicant further argues that, "Lessin does not disclose *according to an option selection of the seller to a third party designation by the seller.*" The examiner respectfully disagrees. Lessin discloses that the "applicant insures that a percentage of the business profits pay for a specific item (e.g. a percentage of the profits be donated to charity)." The applicant in this case is the individual or company that is requesting the money (the seller), in other words, it is the seller that is making the contribution to a charity of its own choosing rather than the individual who is purchasing the good or service.

Also with regard to claim 13, Appellant argues that, "Appellants respectfully submit that Lessin also fails to teach or suggest at least receiving information from the seller, including a description of certain goods, a method of sale for the certain goods, and an option selection including at least a portion of proceeds for donation and an identity of a third party that will receive proceeds from the sale; and providing financial logistics, including collecting proceeds from a financial service provider designated by the buyer, deducting a fee for use of

the system from the proceeds, and transferring the portion of the proceeds for donation according to the option selection of the seller to the third party, as recited by independent claim 13." The examiner would like to point out that for a number of the limitations listed, the Barni reference was relied upon in the rejection, not the Lessin reference. For those limitations for which the Lessin reference was relied upon, a response to the argument can be seen above.

With regard to claim 21, Appellant argues that "the cited references fail to disclose, teach, or suggest each and every element recited in independent claim 21. Among its other elements, independent claim 21 recites: ...providing the first party with one or more options for donating proceeds from the raffle; receiving an option selection from the first party; receiving requests to purchase raffle tickets from a plurality of buyers over a computer network; ...donating the proceeds from the raffle tickets to a third party in accordance with the option selection of the first party. As per the limitations of "providing an option and donating the proceeds..." the examiner would like to point to the response above. As per the limitation "receiving an option..." the examiner would like to point out that it would have been obvious to one skilled in the art at the time of the invention that between the time that a business decided to make a donation to a charity and when the donation is actually made, that the charity must be chosen. As per the limitation, "receiving requests to purchase..." Lessin discloses that a portion of profits from a business being donated to a charity, profits from most businesses come from purchases that are made for goods and services bought at the business. So in

order for the business to donate its profits, customers must purchase an item or a service and when they bring their good or service to a cash register or sales person they are requesting to purchase that particular good or service. This limitation is further evidenced by lines 17-20 in the abstract of Salls which discloses a customer filling out a raffle ticket entry form template in order to purchase raffle tickets.

As per dependent claims 2-4, 6-7, 9-10, and 12, the appellant has argued that the claims are non-obvious because they depend from an independent claim that is non-obvious. The examiner respectfully disagrees. The examiner ascertains that the independent claims are rendered obvious for the reasons stated above, and as such the dependent claims are also rendered obvious.

As per dependent claim 5, the appellant has argued that the claims are non-obvious because they depend from an independent claim that is non-obvious. The examiner respectfully disagrees. The examiner ascertains that the independent claims are rendered obvious for the reasons stated above, and as such the dependent claims are also rendered obvious.

As per dependent claim 8, the appellant has argued that the claims are non-obvious because they depend from an independent claim that is non-obvious. The examiner respectfully disagrees. The examiner ascertains that the independent claims are rendered obvious for the reasons stated above, and as such the dependent claims are also rendered obvious.

As per dependent claims 11, 14-17, and 20, the appellant has argued that the claims are non-obvious because they depend from an independent claim that is non-obvious. The examiner respectfully disagrees. The examiner ascertains that the independent claims are rendered obvious for the reasons stated above, and as such the dependent claims are also rendered obvious.

As per dependent claims 18 and 19, the appellant has argued that the claims are non-obvious because they depend from an independent claim that is non-obvious. The examiner respectfully disagrees. The examiner ascertains that the independent claims are rendered obvious for the reasons stated above, and as such the dependent claims are also rendered obvious.

As per dependent claims 23-28, the appellant has argued that the claims are non-obvious because they depend from an independent claim that is non-obvious. The examiner respectfully disagrees. The examiner ascertains that the independent claims are rendered obvious for the reasons stated above, and as such the dependent claims are also rendered obvious.

As per dependent claims 33-35, the appellant has argued that the claims are non-obvious because they depend from an independent claim that is non-obvious. The examiner respectfully disagrees. The examiner ascertains that the independent claims are rendered obvious for the reasons stated above, and as such the dependent claims are also rendered obvious.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte dismissal of the appeal* as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

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Examiner, Art Unit 3692

Conferees:

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